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Decision No. 87827 SEP 7 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The Pacific Telephone and Telegraph Company, a corporation, for telephone service rate increases to offset increased wage, salary and associated expenses.	Application No. 55214
Investigation on the Commission's own motion into the rates, tolls, rules, charges, operations, costs, separations, inter-company settlements, contracts, service, and facilities of THE PACIFIC TELEPHONE ADD TELEGRAPH COMPANY, a California corporation; and of all the telephone corporations listed in Appendix A, attached hereto.	Case No. 9832

Milton J. Morris, Attorney at Law, for The Pacific Telephone and Telegraph Company, applicant and respondent.
William Shaffran, Attorney at Law, for the City of San Diego; Leonard Snaider, Attorney at Law, and Manuel Kroman, for the City of Los Angeles; Sylvia Siegel, for Toward Utility Rate Normalization; David L. Wilner, for Consumers Lobby Against Monopolies; and William L. Knecht, Attorney at Law, for California Farm Bureau Federation; interested parties.
Ira R. Alderson, Jr., and James Quinn, Attorneys at Law, and James G. Shields, for the Commission staff.

OPINION AFTER REOPENING

In this application, The Pacific Telephone and Telegraph Company (PT&T) sought rate relief totaling $97.9 million. Decision No. 85287 dated December 30, 1975 awarded an increase in certain rates by $65.2 million annually based upon a twelve-month test period ending June 30, 1975.

In adopting an estimate of revenues for the 1974-1975 test year, we stated in Decision No. 85287 (mimeo. p. 6):

> "Effects of increased directory advertising rates effective January 1, 1975, and the timing of local calls, which will start in selected areas in the second quarter of 1976, are insignificant for this test period. These items will be analyzed in future proceedings."

The city of San Diego (San Diego) petitioned for a rehearing regarding this determination, arguing that the increased rates should have been included in our adopted results of operation, thereby reducing the revenue requirement by approximately $15.4 million. We granted a limited rehearing to consider this issue (Decision No. 85557 dated March 9, 1976). San Diego was supported in its position by the staff and the city of Los Angeles (Los Angeles). A rehearing was held before Administrative Law Judge Meaney in San Francisco on April 19, 1976, and the matter was submitted subject to the filing of briefs.

Thereafter, we issued Decision No. 86541 on October 26, 1976 which essentially affirmed our ratemaking determination reached in Decision No. 85287. Since Decision No. 86541 was a decision on rehearing, San Diego petitioned the Supreme Court for a writ of review (S.F. No. 23564). After considering the arguments presented to the Supreme Court in S.F. 23564 we concluded that we should reconsider the issues raised by San Diego. Accordingly, we issued Decision No. 86953 dated February 8, 1977, which reopened this proceeding and

directed our General Counsel to advise the court of our present reconsideration. At the request of PT&T we scheduled and held a hearing before Administrative Law Judge Charles Mattson on April 19, 1977 and the matter was submitted upon the filing of concurrent briefs on May 20, 1977.

To resolve this ratemaking question we must determine whether the estimates of annual revenue and expenses attributable to the institution of single message rate timing (SMRT) of local calls in five-minute units, and increased classified telephone directory advertising rates, should be considered as sources of increased revenue in this proceeding as they were in Decision No. 83162 (Application No. 53587 et al., dated July 23, 1974), for this issue goes back to that decision. In that decision (see table on p. 97, mimeo.) the sources of increased revenue included a net figure of $7.3 million for timing of local message units (after allowance for expenses associated with implementation of SMRT) and $7.7 million for increased directory advertising revenue.

The PT&T rate increase proceeding in which the increased revenue for SMRT and directory advertising rates was recognized as a source of revenue to meet the utility's revenue requirement (Application No. 53587, et al.) had a 1973 test year, and the decision authorizing rate relief totaling $197.9 million was issued July 23, 1974. It was, therefore, apparent that increased revenue would not be received during the 1973 test period used in that proceeding. The recognition of the revenue items in question as part of the revenue requirement determined in Decision No. 83162 was necessarily done on a pro forma basis. Such pro forma recognition of revenues to be collected in the future is proper in ratemaking, as rates are set for a future period. Therefore, we included the $15 million from these rate increases in adopted sources of revenue in Decision No. 83162 because we knew the utility would collect it in the future.

Testimony taken at the rehearing shows that PT&T did not start implementing SMRT until March 1976, although the rates were authorized in 1974 in Decision No. 83162 (dated July 23, 1974). The increased directory advertising rates generated revenue beginning the first six months of 1975 as new directories were issued.

In this proceeding, which has a test year of July 1, 1974 through June 30, 1975, the staff included the estimated annual revenue effects of the two items in question. The staff's witness on revenues, Mr. Carlson, testified as follows with respect to revenues for timing local calls:

> "In Decision No. 83162, signed July 23, 1974, the Commission authorized Pacific Telephone to institute timing of local calls. No time limit was set for accomplishing this. The utility has been studying various methods and equipment designed to time local calls. Present indications are that the utility will start this project during the last half of 1975 and that they will complete the project within two years. The utility estimates that, if timing of local messages had been in effect during the test year, it would have produced a gross revenue for Pacific Telephone of $16,000,000. The $7,900,000 shown above is the staff estimate of revenues to Pacific from this source after deducting charges in the same ratio as was indicated in D-83162, page 97. The utility did not include a revenue effect from this source in their revenue estimate." (Exhibit 30, Answer 16.)

And with respect to directory advertising revenues Mr. Carlson testified as follows:

> "D.83162 authorized increases in Classified Directory Advertising which, if effective during the test period, would produce an increase in revenues of an estimated $8,400,000. The full effect of the authorized increases will not be realized until 1976 when all California directories will have been

> revised. It is estimated that $868,000 in added revenues from this source will be realized during the first six months of 1975. The utility did not include additional revenues from this source during the test period. The staff estimate reflects the full annualized effect during the test period." (Exhibit 30, Answer 17.)1/

PT&T contends that to include the annual revenue effect of SMRT and directory advertising rates in this test year would constitute an out-of-period adjustment. However, before we discuss why PT&T's contention confuses the issue, we note that PT&T did not object to the inclusion of these revenues in our "Sources of Increased Revenue" to make up PT&T's revenue requirement in Decision No. 83162. Also, PT&T in the current rate increase proceeding, Application No. 55492, which has a July 1, 1975 through June 30, 1976 test year, included in its revenue estimate the annual revenue effect of the rates increased by our Decision No. 85287, although those revenues will not be fully realized within the calendar confines of the fiscal test year.

PT&T's contention on rehearing that inclusion of revenues from rates that are not fully collectible during the calendar confines of a particular test year constitutes an objectionable out-of-period adjustment is incorrect. We employ a test year to determine whether, for a normal year of operation, the utility has an additional revenue requirement to be satisfied by increasing rates. It is usually the case that the rates increased to satisfy an additional revenue requirement will not be collected during the calendar confines of the particular test year used to determine the

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1/ At issue with respect to directory advertising rates is whether to include the difference between the $868,000 PT&T included in its showing and the total revenue effect of $8.4 million, or approximately $7.5 million.

revenue requirement. The result is that when we issue our decision in a rate case the revenues from the increased rates are, in effect, recognized in the test year retrospectively on a pro forma basis; we decide what the revenue requirement is and authorize increases in rates to satisfy that requirement for the test year, knowing that, in fact, the increased revenues will be collected prospectively. This process is not an out-of-period adjustment; it is merely giving recognition to known revenue effects from increasing rates. That is what we did in Decision No. 83162, issued in 1974, wherein all of the increased rates would produce revenue sometime beyond the 1973 test year. If we include in the instant test year (1974-1975) the effect of previously authorized rate increases that will be collected in the future, we do, in effect, the same thing. If we did not include the full annual effect of rates and revenues not fully collected in the test year, but which have been authorized to be collected in the future, we would be ignoring known revenue effects from rates we previously increased. This we ordinarily cannot do as a ratemaking principle.

However, there are facts and circumstances which lead us to adopt a different conclusion in this decision regarding the SMRT revenues authorized in Decision No. 83162 than for the classified advertising revenues. PT&T presented testimony that indicates our requirement in Decision No. 83162 that timing equipment be capable of off-peak timing caused considerable unanticipated delay in obtaining and installing equipment and to facilitate SMRT. Also, after the issuance of Decision No. 83162 we have ordered that SMRT not be implemented by PT&T in certain areas on residential subscribers, (Decision No. 86248 dated August 17, 1976 in Application No. 55492) and that where implemented the rates are collected subject to refund (Decision No. 86678 dated November 23, 1976 in Application No. 55492). Also, on July 12, 1977 Decision No. 87584, Application No. 55492, was issued and the SMRT rates authorized in Decision No. 83162 were modified with the probable effect of reducing PT&T's revenue from SMRT. Thus, PT&T has not had the opportunity to realize revenues from the SMRT rates as anticipated in Decision No. 83162 as a result of our subsequent action.

However, the case is different for classified advertising revenues. PT&T has had opportunity to realize the increased revenues from this source as contemplated in Decision No. 83162.

We are, after careful reconsideration, in agreement with San Diego and the staff's position with respect to yellow page advertising revenues. In theory, and without mitigating circumstances, San Diego is correct on its ratemaking position for SMRT revenues, but the unusual circumstances outlined above lead us to our present determination.

On a 1974-1975 test period basis the revenue impact of these two items are as follows:

		Amount
1.	Directory advertising increased: (fully effective in all directories January 1976)	$ 7,500,000
2.	SMRT revenues	7,900,000
	Total	$15,400,000

Upon rehearing and reconsideration we find that we were in error. The pro forma inclusion of the estimated annual revenue effect of increased directory advertising rates should have been continued, and adopted as a source of increased revenue to make up part of the revenue requirement just as it was in Decision No. 83162. Increases in rates which we authorized should not be ignored in subsequent proceedings, even though not fully collected, or there will exist the possibility of duplicating rate increases to make up the utility's revenue requirement. It is usually the case that increased rates authorized in an adopted telephone company rate spread will not be collected fully during the particular test period of the proceeding; however, their estimated annual revenue effect should be recognized in successive test years.

We are of the opinion that the $7.5 million for advertising rates should have been included in our adopted test period revenues in Decision No. 85287.

One further matter remains for our discussion. In Decision No. 86541 we erroneously relied on utility supplied and prepared post test period recorded results to reach the decision we did. It was pointed out by staff witness Gardner that the monthly utility supplied reports were inadequate for prospectively setting rates. (Tr. vol. 28, p. 2205 et seq.) Those earnings summaries are informational and should ordinarily not substitute for the utility's test period results of operations which is subject to detailed and full scrutiny at public hearings by the staff and interested parties. They should not be relied on in resolving an issue of the magnitude presented herein. Furthermore, we do not guarantee that a utility will earn its authorized rate of return. We set rates to provide a utility an opportunity to realize the authorized rate of return, but we cannot retrospectively guarantee it. In issuing this opinion we must look at results of operations data pertaining to the test year in question.

Refunds

PT&T contends that we do not have authority to modify Decisions Nos. 85287 and 86541 because those orders were "final". We have proceeded to reconsider our determination of the issues raised by San Diego after providing notice as required by Section 1708. At PT&T's request we held a public hearing. The decisions had not become final in the sense that the appellate process had been brought to a close, either by us or the Supreme Court. San Diego has filed a timely petition for a writ of review with the Supreme Court.

PT&T also contends that the rates authorized in Decision No. 85287 were ordered collected subject to refund only in view of our pending reconsideration of the ratemaking treatment of deferred federal income taxes, as directed by the Supreme Court in City of Los Angeles v PUC (1975) 15 C 3d 680. We specifically made rates in Decision No. 85287 subject to refund anticipating that the review process by us, resulting from any petitions for rehearing, and

by the Supreme Court on other issues might be completed prior to a final determination of the ratemaking treatment of deferred taxes. That does not mean, as PT&T argues, that the rates established in Decision No. 85287 were not subject to refund if in the course of review by us or the Supreme Court errors in our establishment of revenue requirement are discovered. A decision following rehearing which modifies the result reached in the original decision is nunc pro tunc. Which means if rates were originally set on a faulty revenue requirement determination the subsequent order issued in the course of the review process is the order which sets lawful rates, which in effect, go back to the date of the original order. Under these circumstances we have authority to order refunds, and have done so before; see, Decision No. 83778 (opinion on rehearing) General Telephone, Application No. 51904 (mimeo., p. 48). If we could not order refunds when revenue requirement and rates were improperly established, the petition for rehearing review process would not operate to protect consumers in those circumstances when we erred. The cases cited by PT&T to support its theory (e.g., PT&T v PUC (1965) 62 Cal 2d 634, 650) involve the question of refunds in view of a distinguishable factual background. PT&T v PUC involved a situation where a Commission investigation determined that rates were too high and the question was whether refunds could be ordered back to the date the Commission instituted its investigation. The decision which had years earlier set the rates in question was not under review. Here, today, we issue this decision in the course of review of Decisions Nos. 85287 and 86541, both of which dealt with the establishment of the revenue requirement and rates which are under attack by San Diego.

Since we find that our adopted estimate of intrastate revenues should be increased by $7.5 million, the PT&T revenue requirement established by Decision No. 85287 should be reduced by a corresponding amount. Two questions remain:

(1) How to refund for the overcollection since January 5, 1976?2/
(2) How to reduce rates prospectively by $7.5 million annually?

First, we are faced with calculating the amount of refund to ratepayers resulting from the overcollection by PT&T since January 5, 1976 (the date PT&T's revised tariffs increasing rates to the level authorized in Decision No. 85287 became effective). The amount of the refund is to be determined by dividing the amount of annual overcollection ($7.5 million) by 365 days, and by multiplying that daily amount of overcollection by the number of days from January 5, 1976 to the date the prospective rate reduction we order herein is effective.

Next we must determine on which basis subscribers should receive the refunds. Subscribers have contributed, by our finding on rehearing, an excessive amount in telephone rates to make up our adopted revenue requirement for PT&T. This has been occurring since January 5, 1976. We find that in this proceeding the refund can most equitably be made by means of an adjustment to each subscriber's billing account, residential and business, in an equal amount. Interest should be applicable to the refunded amount at the rate of 7 percent per annum.

Rate Reductions

Several alternatives were presented during rehearing for making any prospective rate reduction. Although intrastate toll rates were increased in Decision No. 85287, we find that to now decrease those rates could have an unsettling consequence on the revenues of independent telephone utilities who participate in toll

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2/ The rates authorized in Decision No. 85287 were authorized subject to refund (mimeo. p. 7); also see, General Telephone, Decision No. 83778 (mimeo. p. 48) on rehearing in Application No. 51904.

settlements. We find that it is appropriate to reduce basic rates in the amounts calculated by the staff as follows:

Basic Rate Reduction In Rate Per Month Service	Total
Residence	
Local	$.10
Foreign Exchange	.10
Business Lines	
Local	.05
Foreign Exchange	.05

	Annual Revenue Reduction
Gross Billing Reduction	$7,500,000
Less Settlements	300,000
Net Effect on PT&T	7,200,000

We will direct PT&T to file revised tariffs reflecting such reductions.

We are aware that in the pending PT&T rate proceeding, Application No. 55492, PT&T annualized the revenue effect of Decision No. 85287 in its results of operations showing. The $7.5 million rate reduction ordered herein will be recognized in our decision on revenue requirement in Application No. 55492 by acknowledging that for the test year in that proceeding PT&T's revenues will be $7.5 million less than estimated.

Findings

1. In Decision No. 85287, we stated, and adopted as a finding, the following:

> Effects of increased directory advertising rates effective January 1, 1975, and the timing of local calls, which will start in selected areas in the second quarter of 1976, are insignificant for this test period. These items will be analyzed in future proceedings.

2. In Decision No. 86541, on rehearing, we affirmed the result reached in Decision No. 85287.

3. San Diego petitioned the California Supreme Court for a writ of review of Decision No. 86541 (S.F. No. 23564).

4. By Decision No. 86953 dated February 8, 1977 we reopened this proceeding to reconsider the issues raised by the city of San Diego.

5. SMRT rates authorized in Decision No. 83162 were delayed in their collection because (1) delays were encountered by PT&T in obtaining and installing timing equipment to accommodate peak-period timing, and (2) our ordering SMRT rates to not be collected in some areas on residential subscribers.

6. Upon considering the evidence and briefs submitted upon rehearing, we should modify the determination we reached in Decisions Nos. 85287 and 86541 and include the additional estimated revenue effect of increased directory advertising rates in our adopted test year results of operations.

7. We find that PT&T was granted an excess of $7.5 million in rates in Decision No. 85287, and rates should be prospectively reduced by that amount annually.

8. Refunds should be ordered for the period of January 5, 1976 (effective date of revised tariffs reflecting rates increased in Decision No. 85287) to the effective date of the prospective rate reduction ordered herein. Said refund should be calculated by dividing 365 days into $7.5 million (producing the daily over-collection) and applying that figure to the number of days from January 5, 1976 to the date rates are reduced prospectively, as ordered herein. Interest at the rate of 7 percent per annum should apply to the refunds from January 5, 1976.

9. Refunds calculated pursuant to Finding 8 shall be made by an adjustment to each residential and business subscriber's billing account in an equal amount.

10. It is reasonable to prospectively reduce basic exchange rates for business and residential subscribers to accomplish an annual rate reduction of approximately $7.5 million as follows:

Basic Rate Reduction In Rate Per Month	
Service	Total
Residence	
Local	$.10
Foreign Exchange	.10
Business Lines	
Local	.05
Foreign Exchange	.05

	Annual Revenue Reduction
Gross Billing Reduction	$7,500,000
Less Settlements	300,000
Net Effect on PT&T	7,200,000

11. The changes in rates and charges authorized by this decision are reasonable; the present rates and charges insofar as they differ from those set forth in this decision, are for the future unjust and unreasonable.

The Commission concludes that Decision No. 86541 should be vacated and the following order implemented.

O R D E R

IT IS ORDERED that:

1. Decision No. 86541 is hereby vacated.
2. The gross revenue requirement increase authorized in Decision No. 85287 is hereby modified downward by $7.5 million by this decision, and the rates established by Decision No. 85287 are modified as ordered herein.

3. The Pacific Telephone and Telegraph Company shall file with this Commission within seven days from the effective date of this order revised tariff schedules, in conformance with the provisions of General Order No. 96-A, reflecting the following monthly reduction in rates:

Service	Total
Residence	
Local	$.10
Foreign Exchange	.10
Business Lines	
Local	.05
Foreign Exchange	.05

The effective date of such revised tariff schedules shall be five days after the date of filing. The revised tariff schedules shall apply only to service rendered on and after their effective date.

4. The Pacific Telephone and Telegraph Company shall file a refund plan for this Commission's approval within fifteen days from the date hereof which will accomplish a refund, calculated in accordance with Findings 8 and 9, by refunding an equal amount to subscribers with an adjustment to each billing account for such

subscribers. The refund shall be made to such subscribers within ninety days after the effective date of the rate reduction ordered herein.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of SEPTEMBER, 1977.

I will file a dissent.
William Symons, Jr.

Robert Batinovich
President

Richard D. Gravelle

David A. Bedrick
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

A. 55214)
C. 9832) - D.

COMMISSIONER WILLIAM SYMONS, JR., DISSENTING

To order refunds on this record requires the Commission to distort the law. This decision can be used to undermine the established state policy against retroactive ratemaking. (See Part I of my dissent dated July 19, 1977, in Decision No. 87620, copy attached.)

This order was final. We cannot use Section 1708 to snatch cases back from the Supreme Court and adjust them retroactively and order refunds.

This is an important policy determination, affecting the certainty of all P.U.C. decisions. Under the distorted reasoning of today's majority decision, uncertainty enters all Commission decisions because any appeal to the Supreme Court would keep our decisions completely malleable and manipulatable for years. All certainty is lost along with the ability to plan for the future.

San Francisco, California
September 7, 1977

William Symons Jr.
WILLIAM SYMONS, JR.
Commissioner

Attachment

C. 9625)
C. 9177)
C. 9265)
C. 9271)
C. 9323)
C. 9360) - D. 87620
C. 9546)
C. 9600)
C. 9610)
C. 9637)
C. 9652)
Pacific Telephone and Telegraph Co.: Interconnection

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

I. To order refunds on this record requires the Commission to distort the law. This decision can be used to undermine the established state policy against retroactive ratemaking.

The prohibition against retroactive ratemaking is clear. As the Supreme Court stated in the City of Los Angeles v. Public Utilities Commission, 7 C.3d 331 (1972), at p. 356:

> "We were confronted with a similar question in Pacific Tel. & Tel. v. Public Util. Com., 62 C.2d 634 ... We concluded after an extended review of the relevant statutes that the Legislature had given the commission power to establish rates prospectively and has not given it power to order refunds of amounts collected by a public utility pursuant to an approved order which has become final.
>
> "We pointed out that the fixing of a rate is prospective in its application and legislative in its character, that under section 728 of the Public Utilities Code, as well as other sections of the code, the commission is given power to prescribe rates prospectively only, and that the commission could not, even on grounds of unreasonableness, require refunds of charges fixed by formal finding which had become final. (62 Cal. 2d at pp. 650-655.) We recognized that there may be policy arguments for giving power to the commission to order refunds retroactively where rates are found to be unreasonable or to prevent unjust enrichment, but we concluded that such 'arguments should be addressed to the Legislature from whence the commission's authority derives, rather than to this court.' (62 Cal. 2d at p. 655.) The Legislature has not changed any of the relevant statutory provisions. (Emphasis added.)

In the discussed Pacific Telephone case, the Supreme Court upheld the Commission's order directing rate reductions prospectively of $41 million per annum. The court invalidated the Commission's order of $80 million in refunds. In today's case the amount of refunds approximates $11 million. Although here the refund amount is smaller, the desire to order refunds is just as large, and legal consequences of the precedent established is just as important.

To legitimatize this order the majority uses a rationale which will impair the finality of all Commission decisions. Instead of Commission decisions being deemed "final" when the statutory period for rehearing has expired or a petition for rehearing has been decided (a period which may extend as long as ninety days), "final" is interpreted to mean when the appellate process is finally concluded (a period which may extend as long as one to two years).

Proceeding with this meaning for "final", the rationale goes to step two. Public Utilities Code Section 1708 is cited. This section grants the Commission power to reopen a case and "rescind, alter and amend" a decision. The majority combines its definition of "final" with Section 1708 to assert that the Commission can change any order under appeal retroactive to the original decision date. This expands the uncertainty as to the ultimate content of a Commission decision from a few months to as long as one to two years. It also permits Commission decisions already effective to be undone by a change in Commissioners due to retirement and new appointments. Such instability is not intended by statute and would be deplorable if allowed to stand.

I understand a decision to be "final" when the issues raised by the parties to a proceeding have been determined by Public Utilities Commission, the statutory provisions concerning right to petition the Commission for rehearing have been exhausted (Public Utilities Code Section 1731-1736) and the order has become effective.

In this proceeding before us, Decision No. 85791 is a final Commission decision: It was properly issued on May 11, 1976; the Commission received a Petition for Rehearing on June 2, 1976, which it considered; and on July 19, 1976 in Decision No. 86151 the Commission denied rehearing. The Commission decided the rights and interests of the parties, including a determination that refunds would not be granted and that the utility could cease recordkeeping.

To view "final" in this way is consistent with oft-used argument of the Commission before the California Supreme Court that a writ of review should not be granted because there is a failure on the part of petitioner to exhaust his administrative remedies: that is, because a petition for rehearing under Public Utilities Code Section 1731 had not been filed, or not yet been ruled on. The Commission relies on the general rule that an order is not appealable until it is final.

The right to reopen under Public Utilities Code Section 1708 is different. It operates prospectively only. If the Commission spontaneously reopens on its own motion, after the time for rehearing has passed and an order is effective, notice and rehearing are required before changes are made. And, once decided, unless a refund condition is in effect, we order prospectively. This is exactly the logic and procedure we enunciated earlier this month in The Pacific Telephone & Telegraph case concerning Single Message Rate Timing. (See Decision No. 87584 dated July 12, 1977.)

The outside possibility that the Commission may at any time reopen under Section 1708 does not make final Commission decisions something other than final. So also, the appellate power of the Supreme Court to review a final Commission decision does not make it impossible for them to be considered final Commission orders.

The Commission majority also confuses its right to rescind and amend under Section 1708, which operates prospectively, with the Supreme Court's power to annul which can invalidate a Commission's rate increase order. The Court exercised this power in City of Los Angeles v. Public Utilities Commission 7 C.3d 331 (1972). As this decision states at page 336, the Court issued a stay along with its writ so it could effect refunds if necessary. This precaution was taken despite the fact the Commission's Decision No. 78851 had conditioned the rate increase upon acceptance by Pacific Telephone of a refund provision. (72 CPUC 327, p. 370, Ordering Paragraph 3)

Here, Decision No. 85791 terminated previous refund provisions in 1976. Decision No. 86151 denied rehearing. The petitioner requested writ of review from the court, but no suspension. The Court granted the writ, but unlike City of Los Angeles v. Public Utilities Commission cited above, granted no stay. Given the present posture of the case, with the Commission's action and the petitioner's court order for review, no right to order refund is available to the Commission. To allow the Commission to reach back and reconstruct such a right would sanction a scheme that lets retroactive ratemaking in by the back door. It will allow a plague of uncertainty to descend upon many major decisions affecting the enterprises we regulate in the communication, transportation and energy sectors.

II. When a final Commission order is modified using Section 1708 "the opportunity to be heard as provided in the case of complaints" should not be denied the parties.

This Commission just had its knuckles rapped by the Supreme Court for misusing Section 1708. We substantially changed a standing decision of the Commission, but did so denying protestants a hearing. California Trucking Association v. Public Utilities Commission, 19 Cal. 3d 240 (1977)

In the CTA case we only allowed protestants to submit written comments on a staff white paper. In the instant case protestants were only allowed to submit briefs. The parties requested hearings but were improperly denied this right. The majority rejoinder that we have had thirty days of hearing in this case so far is misleading. Hearings to date were "phased", with certain issues being developed on the record, but other issues, such as certification procedures for PBX, KTS, and extension telephones, being deferred. Also deferred up until this point was the question of economic impact which has been a material issue since the initial Order Instituting Investigation in 1973. The Commission majority attempts to recast these matters as legal issues or irrelevant issues and in that way avoid hearings. This facile attempt to evade the hearing requirements present in Section 1708 is improper and transparent.

San Francisco, California
July 19, 1977

/s/ William Symons, Jr.
WILLIAM SYMONS, JR.
Commissioner